No. 832

MAR 31 1944

CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

IN THE MATTER OF HELEN ELIZABETH McCLURE INNIS, BANKRUPT

HELEN ELIZABETH McCLURE INNIS,
Petitioner,

v.

UNITED MERCANTILE AGENCIES, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, WITH SUPPORTING BRIEF

EARL B. BARNES,
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UNITED MERCANTILE AGENCIES, INC.,
Respondent.
No. ———

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, WITH SUPPORTING BRIEF

A

SUMMARY STATEMENT OF THE MATTER INVOLVED

The petitioner owned twenty shares of stock in an Indiana state bank which went into liquidation conducted by the Department of Financial Institutions of the State of Indiana through a special representative. Thereafter, on

March 7, 1935, said special representative commenced an action in the Circuit Court of Tippecanoe County, Indiana, against the stockholders of said bank, including petitioner, to enforce stockholders' liability. Petitioner was served with summons April 15, 1935, and on November 27, 1935, filed her petition in voluntary bankruptcy in the United States District Court for the Southern District of Indiana (Indianapolis Division) and was duly adjudicated a bankrupt. (R. 5.)

In Schedule A-3 of said petition she not only listed the claim of the special representative, stating the number of shares and the amount claimed, but specifically stated that suit was pending thereon, describing the court and the cause number. (R. 6.)

All required statutory notices were duly given by the Referee. On March 25, 1936, an order of discharge was duly entered; and on April 13, 1936, a copy thereof was duly recorded in Fountain County, Indiana, where Petitioner then resided. No appearance was entered in the state court on account of the serious illness of her mother at the time of the service of summons and the later belief that the discharge in bankruptcy relieved her of giving the matter further attention. No trustee was appointed in the bankruptcy proceedings, no proof of claim was filed with respect to said stock liability, and no payment was made to creditors. (R. 6.)

In the summer of 1936 petitioner moved to California. More than three years thereafter (October 27, 1939) the special representative, who had knowledge of said bankruptcy petition and discharge, obtained a default judgment against Petitioner in the amount of Two Thousand Dollars ($2,000.00) and interest. (R. 6, 8, 9.) On April 23, 1942,

Respondent, in the regular course of its business of buying assets of banks in liquidation, purchased all remaining assets from said special representative for Ten Thousand Nine Hundred Sixty-three Dollars ($10,963.00). The assets so purchased were in the face amount of Five Hundred Seventy-six Thousand Two Hundred Fifteen Dollars Three Cents ($576,215.03) and included stock liability claims in the face amount of Thirty-six Thousand Four Hundred Ninety-six Dollars Eighty-five Cents ($36,496.85), including the judgment against petitioner. (R. 6, 7, 8, 9, 10.)

Petitioner learned of said judgment and respondent's purchase thereof by a letter from respondent dated August 24, 1942. (R. 9.) This was subsequent to the expiration of the two-year period granted by the Indiana statutes to seek relief from a judgment taken against a party through his mistake, inadvertence, surprise or excusable neglect. (Burns' Ind. Stat. Ann. 1933, Sec. 2-1068; Acts 1881 (Spec. Sess.), Ch. 38, Sec. 135, p. 240, as amended by Acts of 1921, Ch. 115, Sec. 1, p. 277.)

After her discharge, Petitioner acquired an interest in real estate. (R. 7, 8.) Petitioner's interest therein was advertised for sale on execution of said judgment to be held on January 20, 1943. (R. 8.) On January 15, 1943, Petitioner filed in the court in which the bankruptcy proceeding had been filed her supplemental petition to restrain said sale. (R. 1 to 3.)

The District Court on the foregoing facts enjoined the Sheriff of Fountain County, Indiana, and respondent from proceeding to realize on said judgment by levy, execution, sale or otherwise. (R. 11.) The Circuit Court of Appeals for the Seventh Circuit on appeal by the respondent above reversed said judgment with directions to proceed in ac-

cordance with its opinion. (R. 27.) The opinion is not yet reported and appears in the Record, at pp. 22 to 26.

B

JURISDICTIONAL STATEMENT

The United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and judgment reversing the judgment of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, on February 18, 1944. (R. 22 to 27 incl.) No petition for rehearing was filed. This Court has jurisdiction under Section 240(a) of the Judicial Code, as amended. (28 U.S.C.A., Sec. 347(a)).

C

STATEMENT OF QUESTIONS PRESENTED

1. Whether a bankruptcy court may in the exercise of its discretion properly enjoin the enforcement of a state court judgment taken by default more than three years after the judgment defendant has been discharged in bankruptcy where (a) the action was pending against the petitioner and a number of other defendants and service was obtained on the petitioner prior to the filing of the bankruptcy proceeding; (b) the debt was scheduled by the bankrupt and the pending case specifically described in connection therewith; (c) all notices were duly served and the plaintiff in the pending action had full knowledge of the bankruptcy proceeding and the discharge; (d) the failure of the bankrupt to take steps to stay the state court proceeding or appear and bring such discharge to the atten-

tion of the state court resulted from the belief that the discharge in bankruptcy rendered such action unnecessary; (e) no step was taken against the bankrupt in said pending state court proceeding until a default judgment was obtained three years and eight months after the discharge in bankruptcy and three years and two months after the bankrupt had removed to another state; and (f) no attempt to enforce said judgment was made and the bankrupt had no knowledge thereof until nearly three years thereafter, being ten months after the expiration of the period allowed a party under the applicable state law to institute proceedings to obtain relief from a judgment taken against him by his mistake, inadvertence, surprise, or excusable neglect.

2. Whether the failure of the bankrupt under such circumstances, especially where as here the state court plaintiff was not a private citizen but a statutory representative of the State of Indiana, and the bankrupt was one of a number of defendants, to obtain an order in the bankruptcy court prior to her discharge, staying said cause as to her, or to appear in the state court proceeding thereafter and set up the bankruptcy discharge, constitutes such negligence and fault on her part as to constitute a bar to equitable relief in the bankruptcy court, subsequent to discharge.

3. Whether the power of the bankruptcy court to grant injunctive relief in aid of the discharge subsequent thereto is limited to cases involving fraud, duress, coercion or other similar grounds.

4. Whether the conduct of the special representative of the Department of Financial Institutions of the State of Indiana in obtaining a default judgment after appearing to acquiesce in the effect of the bankruptcy proceeding by taking no action in the state court until more than three

years after the discharge and more than three years after petitioner had left the state, and his subsequent conduct in failing to notify petitioner of said judgment until the time when statutory relief might have been sought therefrom in the state court had expired, was not so inequitable and unconscionable as to constitute a proper basis for the exercise of equitable power by the bankruptcy court on the supplemental petition.

D

STATEMENT OF REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

1. In holding that Petitioner should be denied relief herein the Circuit Court of Appeals for the Seventh Circuit has rendered a decision in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *Holmes v. Rowe,* 97 F(2d) 537, on the same matter.

2. In so holding the said Court has decided a federal question in a way probably in conflict with the decision of this Court in *Local Loan Co. v. Hunt,* 292 U.S. 234, 78 LEd. 1230.

3. In so holding the said Court has decided an important question of federal law which has not been but should be settled by this Court.

WHEREFORE, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify to this Court for its review and determination, on a day certain to be herein named, all

proceedings in the case numbered and entitled on its docket No. 8385, In the Matter of Helen Elizabeth McClure Innis, Bankrupt, United Mercantile Agencies, Inc., Appellant, v. Helen Elizabeth McClure Innis, Appellee, and that the judgment of said Circuit Court of Appeals be reversed by this Honorable Court, and the judgment of the District Court of the United States for the Southern District of Indiana be affirmed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may be meet and just, and your petitioner will ever pray.

HELEN ELIZARETH MCCLURE INNIS,

By: Earl B. Barnes,
Alan W. Boyd,

Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

OPINION OF THE COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is found in the record at pages 22 to 26. It has not yet been reported.

II

JURISDICTION.

A statement concerning jurisdiction appears under B on page 4 of the petition. The judgment of the Circuit Court of Appeals reversing the judgment of the District Court of the United States for the Southern District of Indiana was rendered February 18, 1944. (R. 27.) No petition for rehearing was filed.

III

STATEMENT OF THE CASE

A statement of the case containing all matters material to a consideration of the questions presented by the petition, with appropriate page references to the printed record, appears under "Summary Statement of the Matter Involved" on Page 1 of the petition.

IV

SPECIFICATION OF ERROR

A specification of the error relied on is contained in the petition under the heading "Statement of Reasons Relied

On for Allowance of the Writ." The Circuit Court of Appeals erred in reversing the judgment of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, which judgment was in favor of Petitioner.

V

SUMMARY OF ARGUMENT

The decision of the Seventh Circuit Court of Appeals is in direct conflict with *Holmes v. Rowe* (C. C. A. 9), 97 F(2d) 537, and with the basic reasoning of this court in *Local Loan Co. v. Hunt,* 292 U. S. 234, 78 LEd. 1230.

The decision in *Holmes v. Rowe, supra,* is not based on fraud and the Seventh Circuit Court of Appeals was in error in purporting to distinguish said case on that ground.

Jurisdiction should be exercised in cases of this character according to the exigencies of the case.

The primary consideration is whether unusual circumstances exist and not whether the case involves fraud, duress, coercion or other similar grounds of relief in equity. Each case depends on its own particular facts and the exercise of authority by the bankruptcy court is discretionary. The facts and circumstances in the case at bar are sufficiently unusual to warrant the exercise of the District Court's discretion in favor of petitioner and the reversal thereof by the Circuit Court of Appeals is unwarranted.

An important question of federal law is involved, which has not been and should be settled by this court.

ARGUMENT

The decision of the Seventh Circuit Court of Appeals is in direct conflict with *Holmes v. Rowe* (C.C.A. 9), 97 F(2d) 537, and is also in conflict with the basic reasoning of this court in *Local Loan Co. v. Hunt*, 292 U. S. 234, 239, 240, 78 LEd. 1230, which was followed in *Holmes v. Rowe, supra.* The facts in the latter case were identical with this case as to (1) the filing of a petition in bankruptcy and discharge of the petitioner scheduling a debt sued on in a pending action (in this case the schedule also specifically described the pending action); (2) the failure to appear in the state court and set up the bankruptcy discharge or to obtain an order in the bankruptcy court during the pendency of the bankruptcy proceeding, staying the state court action; (3) the taking of a default judgment in the state court subsequent to the discharge; (4) the subsequent application to the bankruptcy court for relief by supplemental petition. *Holmes v. Rowe, supra,* holds the action of the District Court in granting relief proper. The Seventh Circuit Court of Appeals in this case holds the contrary.

The opinion in this case seeks to distinguish *Holmes v. Rowe, supra,* on the sole ground that the opinion in that case states that prior to the filing of the bankruptcy petition the state court plaintiff had stated to the debtor that a judgment had already been taken, which was not the fact. It concludes, therefore, that the Ninth Circuit Court of Appeals was granting relief on the ground of fraud, not present in this case. The opinion in *Holmes v. Rowe,* however, is rested on no such ground. Fraud is not even referred to. The Court quoted from *Seaboard Small Loan Corporation v. Ottinger* (C.C.A. 4), 50 F(2d) 856, cited by this court in *Local Loan Co. v. Hunt, supra,* as follows:

> "The fundamental question involved is the effect of the discharge in bankruptcy upon the debt. * * * The question may be decided by either state or federal court according to state law, but the bankruptcy court has primary and superior jurisdiction to determine the effect of its own decree of discharge, and it may exercise, or refuse to exercise, that jurisdiction *according to the exigencies of the case.*" (All italics ours unless otherwise indicated.)

In *Local Loan Co. v. Hunt,* 292 U. S. 234, 241, this court first holding that the bankruptcy court has authority to entertain a proceeding of this character, determine the effect of the adjudication and order, and enjoin the creditor from a threatened interference therewith, said that the court was not bound to exercise its authority and that "* * * it probably would not and should not have done so except under *unusual circumstances* * * *."

In limiting the exercise of the authority to cases involving fraud, duress, coercion or other similar grounds of relief in equity the Circuit Court of Appeals has unduly limited the consideration of "the exigencies of the case" and "unusual circumstances" and in holding the petitioner barred from relief on account of negligence has failed to take into account the realities of the situation. It is conceded in the opinion that an order could have been entered in the bankruptcy proceeding staying the state court proceeding had any necessity for such an order appeared. The result is to give to the apparently acquiescent creditor an advantage over the one who indicates that he will press his claim notwithstanding the bankruptcy proceeding.

The Fourth Circuit Court of Appeals had occasion to consider a somewhat similar case in *Helms v. Holmes,* 129 F(2d) 263. In that case, however, the state court action

was commenced *after* the discharge in bankruptcy. Obviously the bankrupt is in a somewhat different situation when notified in some manner that a judgment is to be sought notwithstanding the discharge. The Fourth Circuit Court of Appeals cites and quotes from *Holmes v. Rowe, supra,* and states the rule to be that "whether the bankruptcy court should exercise such discretionary authority is a matter to be determined from the peculiar facts of the particular case."

While relief was denied in the majority opinion on the ground that the circumstances were not sufficiently unusual, the court did not restrict relief to cases involving fraud, duress, coercion and like circumstances nor hold as a rigid matter of law that the failure to appear in the state court constitutes such negligence as to bar relief. In fact, although the opposite result was reached, *Helms v. Holmes, supra,* is stated in Vol. 1, 1943 Cumulative Supplement, Collier on Bankruptcy (14th ed.), p. 59, note 52, to be a recent affirmation of *Holmes v. Rowe, supra.*

In the dissenting opinion in *Helms v. Holmes, supra, Holmes v. Rowe, supra,* is cited as contrary to the result reached by the majority. Neither opinion indicates that the latter case was thought to rest on fraud. The following language of the dissenting opinion is pertinent here:

> "But the right to enjoin being established, the circumstances under which it may be exercised are not confined to any definite and limited state of facts. The reported cases show a tendency to enlarge rather than to restrict its use. In my opinion this tendency is a wise and humane one and necessary to prevent nullification of the beneficient purposes of the bankrupt law at the hands of ingenious and grasping creditors. Certainly the right

to an injunction is not barred merely because the bankrupt might have fought the matter out in the state court. Local Loan Co. v. Hunt decided this. And seemingly it is not barred in all cases merely because the bankrupt has failed to assert his defenses in the court where he has been sued. * * *

There is universal and settled recognition that, as stated in *Williams v. United States Fidelity & Guaranty Co.*, 236 U.S. 549, 554, 35 S.Ct. 289, 290, 59 LEd. 713:

'It is the purpose of the bankrupt act to convert the assets of the bankrupt into cash for distribution among creditors, and then to relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.'

Bearing in mind the above purpose, it seems clear that there is imposed on the bankruptcy court the responsibility and the right to exercise its powers to insure that the purpose is really accomplished. While the necessities which have led to the issuance of injunctions against creditors who ignore the bankruptcy of their debtors have created a steadily growing tendency to extend the use of this form of relief, I do not think we need go beyond the scope and precedent of the decided cases in order to justify its exercise here; and this even if we limit its use to the "unusual" cases to which reference is made. * * *

Taking it to be a fact that the bankrupt did not know that a judgment was being or would be sought against him and that he had reasonable grounds to believe that no judgment would or could be taken against him, the conclusions in the majority opinion lose much of their force so far as they are predicated on the theory that this is merely a

case where a bankrupt negligently failed to offer a defense at the proper time. I am unable to see that a man is guilty of "gross negligence" in failing to defend a suit when he does not know that any claim is being asserted against him and has reasonable grounds to believe that none is being asserted. * * *

And because the district judge was in position to know the surrounding circumstances and to sense the atmosphere of this whole matter better than this court can, I would be unwilling to interfere with the exercise of his judgment unless convinced that it was plainly unsound. On the contrary, I am of opinion that the granting of the injunction was clearly right and was necessary to prevent a gross injustice. The purpose of the bankruptcy law to offer insolvent debtors a further chance would mean nothing if this debtor who once turned over his property to his creditors and started anew should have the little property which he has accumulated since snatched away from him by a judgment surreptitiously obtained seven years ago, of the existence of which he never knew, and which represents a debt from which he was discharged. * * *

Neither the time when the suit is brought nor the time when the judgment is obtained is determinative of any legal principle. If a court of bankruptcy can, as in Re Cleapor, enjoin a creditor from bringing suit, after the bankrupt has been discharged, in an attempt to obtain judgment in spite of the discharge, there would seem no reason why it could not equally enjoin the creditor from enforcement of the judgment if he obtained it. The character of the liability is not altered by being reduced to judgment. *Badger v. Jordan Marsh Co., supra.* The question is one of the equitable powers of the court to give force and effect to its decrees and to protect the bankrupt in the enjoyment of the rights given him by

> the law, and is to be determined by the principles of equity. * * *
>
> The very basis on which Local Loan Co. v. Hunt and the other cited cases were decided was that the bankrupt had a right to appeal for protection to the court whose decree had determined his rights and need not to be left to the uncertainties of seeking relief elsewhere."

It will be noted that in denying the application of *Local Loan Co. v. Hunt,* 292 U.S. 234, to this case, the court stated:

> "That had to do with the validity of an injunction, approved by this court in 67 F(2d) 998, restraining *during bankruptcy,* the institution and prosecution of suits based upon assignments of wages. There, there was in fact an application for a restraining order against the prosecution of the suits, as there might have been in this case."

It is clear from even a cursory examination of this Court's opinion in *Local Loan Co. v. Hunt* that no question of restraining a suit *during bankruptcy* was involved. The action enjoined was commenced after a discharge in bankruptcy and the debtor was advised thereby that the creditor was proceeding in spite of the discharge. Had such notice been given here the situation would have been entirely different.

In the opinion in this case no consideration is given to the question of unusual circumstances except that the various dates are stated when steps were taken. Even these are sufficient to demonstrate the fallacy of the description of the state court proceeding as one where the court was "proceeding in its normal functions to enforce

a legitimate demand." It is scarcely normal for a period of four and a half years to intervene between the service of process in a pending action and the taking of a default judgment.

It is submitted that under the foregoing authorities the sole issue was whether the circumstances were sufficiently unusual to warrant the exercise of the District Court's discretion. In determining such issue that Court had the right to consider:

1. The fact that petitioner not only scheduled the debt but described the pending action therein.
2. That she believed that the discharge relieved her of the necessity of doing anything further in the pending action.
3. That she left the state six months after her discharge, no action having been taken by the special representative in the meantime.
4. That the plaintiff in the pending action was not a private litigant but a representative of a department of the State of Indiana.
5. That petitioner was only one of a number of defendants in said cause.
6. That said special representative knew of said discharge and took no action in said cause until more than three years after petitioner had left the state.
7. That no action was taken by said special representative to enforce said judgment prior to the sale of all assets remaining in his hands to respondent for a nominal consideration more than two and one-half years after said judgment was taken.

8. That petitioner did not learn of said judgment or said sale until nearly three years after said judgment was rendered.

9. That under the applicable Indiana statute petitioner's remedy for relief from a judgment taken by mistake, inadvertence, surprise, or excusable neglect was limited to two years from the date of the judgment. (Sec. 1068, Burns' Ind. Stat. Ann. 1933; Acts 1881 (Spec. Sess.), Ch. 38, Sec. 135, p. 240; 1921, Ch. 115, Sec. 1, p. 277; appendix post.)

Each of the grounds asserted by petitioner for allowance of the writ exists in this case. The decision is in conflict with the decision of another Circuit Court of Appeals on the same matter; is in probable conflict with a decision of this Court; and an important question of federal law is involved which has not been and should be settled by this Court. The petition should be granted, the judgment of the Circuit Court of Appeals should be reversed, and the judgment of the District Court should be affirmed.

Respectfully submitted,

EARL B. BARNES,
ALAN W. BOYD,

Counsel for Petitioner.

APPENDIX

Burns' Indiana Statutes Ann. 1933, Sec. 2-1068 (Acts 1881 (Spec. Sess.), Ch. 38, Sec. 135, p. 240; 1921, Ch. 115, Sec. 1, p. 277), so far as material here, is as follows:

> "The court shall relieve a party from a judgment taken against him through his mistake, inadvertence, surprise, or excusable neglect*, on complaint filed and notice issued, as in an original action, within two (2) years from and after the date of the judgment."

* The term "excusable neglect" as used in the statute is one of very general application. There is no fixed rule by which it can be determined in a given case whether the neglect is excusable and each case depends on its own particular facts and circumstances.

First Nat. Bank v. Stillwell (1911), 50 Ind. App. 226, 230, 231;

Masten v. Indiana Car etc. Co. (1900), 25 Ind. App. 175, 181.

All doubts are resolved in favor of the application.

First Nat. Bank v. Stillwell (1911), 50 Ind. App. 226, 232;

Masten v. Indiana Car etc. Co. (1900), 25 Ind. App. 175, 187.

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HELEN ELIZABETH McCLURE INNIS,
Petitioner,

vs.

UNITED MERCANTILE AGENCIES, INC.,
Respondent.

ANSWER OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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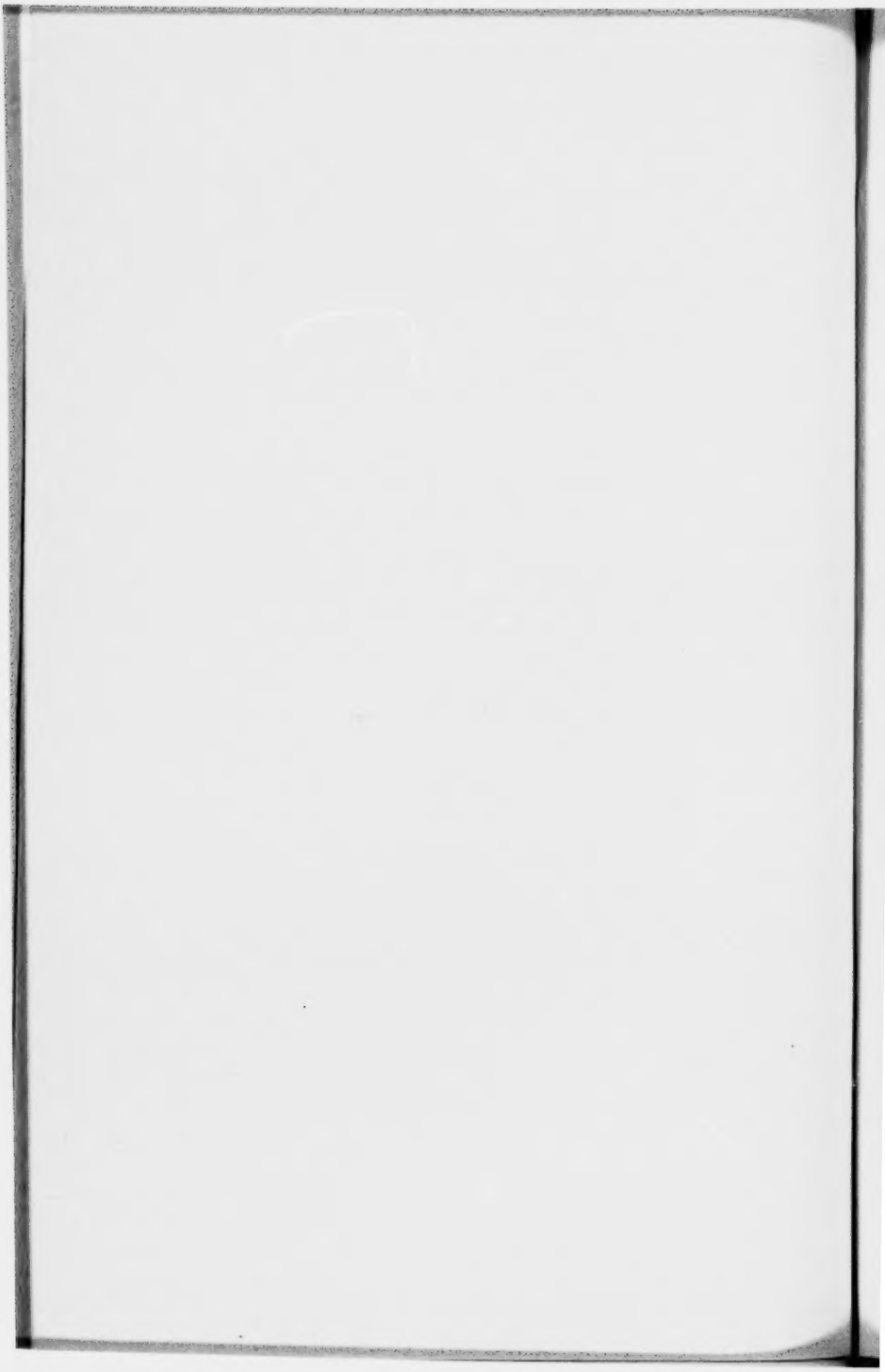

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Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No. 832.

HELEN ELIZABETH McCLURE INNIS,
Petitioner,

vs.

UNITED MERCANTILE AGENCIES, INC.,
Respondent.

ANSWER OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The respondent respectfully shows, in answer to the petition for writ of certiorari, as follows:

I.

Issues of the Case.

This is a suit in equity, seeking injunction against collection of a Two Thousand Dollar judgment obtained in a law action in the State Court of Indiana. The petitioner was one of the defendants in the case of Glenn B. Hines, Receiver, etc., *vs.* Alys H. Ankeny, *et al.*, Law No. 4408 in the Tippecanoe Circuit Court of Indiana, filed March 17, 1935.

Petitioner was duly served with personal summons more than ten days previous to April 30, 1935, the date set for appearance. On November 27, 1935, petitioner was declared a voluntary bankrupt. The claim of plaintiff was scheduled as a pending suit. No Trustee was appointed; no claim was proven in the bankruptcy; no stay of pending suit was issued out of the bankruptcy court.

On March 25, 1936, petitioner was discharged as a bankrupt. No appearance was made by petitioner in the lawsuit in the Tippecanoe Circuit Court, and no answer of bankruptcy was filed in bar of action.

On October 27, 1939, petitioner was defaulted and judgment entered against her for $2,000.00 in said law case. On the 23rd day of April, 1942, the respondent purchased said judgment, together with other assets held by said Receiver, the plaintiff in said case number 4408, and respondent ordered execution on said judgment in December, 1942, to the Sheriff of Fountain County, Indiana. Sale of petitioner's real estate was advertised for January 21, 1943, pursuant to said execution in Fountain County.

January 20, 1943, the United States District Court for the Southern District of Indiana enjoined said Sheriff's sale; and on June 16, 1943, said injunction was made permanent. Appeal was taken to the Circuit Court of Appeals for the Seventh Circuit, where the judgment of the United States District Court was reversed, from which petitioner now seeks certiorari.

II.

Points Relied on By Respondent.

1. The respondent contends that the decision of the Circuit Court of Appeals for the Seventh Circuit in this case is in harmony with the settled law of the case. A discharge in bankruptcy is a personal defense as to the bankrupt and must be pleaded to avail herself of the discharge, and, if not pleaded, is waived.

2. The case of *Holmes* v. *Rowe*, 97 Fed. (2nd) 537, from the Ninth Circuit Court of Appeals, is distinguished on the facts from the instant case, as shown by the opinion of the Circuit Court of Appeals in this case.

3. This court has settled all questions of federal law in the case at bar in the opinion of *Dimmock* v. *Revere Copper Company*, 117 U. S. 559.

4. The decision of the Circuit Court of Appeals in the case at bar is in harmony with the late decision of *Helms* v. *Holmes*, 129 Fed. (2nd) 263, decided by the Fourth Circuit Court of Appeals.

5. The decision of the Circuit Court of Appeals in the case at bar is also in harmony with the law of Indiana on the same subject, as set out in the cases of

Bowen v. *Eichel*, 91 Ind. 22, and

First National Bank of Goodland v. *Pothuisje*, 217 Ind. 1, 25 N. E. (2nd) 436.

6. The decision of the Circuit Court of Appeals in no way conflicts with *the Local Loan Company* v. *Hunt case*, 292 U. S. 234, 78 L. Ed. 1230. In the latter case the appellee had no adequate remedy but to appeal to an equity court. No judgment had been rendered against him, and no adequate means of defense was afforded him. In the

case at bar petitioner had three years to file an answer of discharge in bankruptcy in the state court, but failing to file such plea she waived that personal defense, or any defense. See *Ayrshire Coal Co.* v. *Thurman*, 127 N. E. 810 Syl. 5 & 6, p. 812.

7. A court of equity will not recognize a suit to enjoin an action or proceeding at law where the defendant has failed to pursue or has waived her remedies at law.

8. The settled rule in equity is that ignorance of the law is no defense; and petitioner's alleged belief that her discharge in bankruptcy *ipso facto* discharged her in the State's law court is no ground for an appeal to a court of equity.

9. The respondent, being a *bona fide* assignee for value of the original judgment creditor in the law court, is entitled to protection against the petitioner, whose own delay in seeking relief from the judgment has caused respondent to change its position with reference thereto. See *Lucking, et al.* v. *Shram*, 117 Fed. (2nd) 160, op. 162.

III.

Summary.

All of the questions of federal law applicable to the case at bar have been settled by this court ever since the decision in the case of *Dimmock* v. *Revere Copper Company*, 117 U. S. 559, and all decisions since that time have followed the doctrine there laid down.

To afford petitioner relief in this case, all former decisions of this court on the identical proposition involved would have to be reversed and the settled law in such cases would be entirely upset, and left in a state of confusion and uncertainty.

Since the decision of the Seventh Circuit Court of Appeals in the case at bar is in harmony with these established rules, the respondent claims that the petition for writ of certiorari should be denied.

Respectfully submitted,

ROBERT E. CLEMENCE,
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